

Regular Session, 2010

HOUSE BILL NO. 1486 (Substitute for House Bill No. 926 by Representative Little)

BY REPRESENTATIVES MORRIS AND CARMODY AND SENATOR ADLEY

WATER/RESOURCES: Provides for cooperative endeavor agreements for the withdrawal of running surface water for certain purposes

1 AN ACT

2 To enact Chapter 9-B of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 30:961 through 963, relative to the use of surface water; to provide for
4 definitions; to provide for cooperative endeavor agreements to withdraw running
5 surface water; to provide for findings and purpose; to provide for requirements for
6 cooperative endeavor agreements to withdraw running surface water; to provide for
7 the authority of the secretary of the Department of Natural Resources; to provide for
8 legislative intent; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 9-B of Title 30 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 30:961 through 963, is hereby enacted to read as follows:

12 CHAPTER 9-B. SURFACE WATER MANAGEMENT

13 §961. Cooperative endeavor agreements; withdrawal of surface water; intent

14 A. As provided by this Chapter and except as otherwise provided by law, a
15 person or entity, may enter into a cooperative endeavor agreement to withdraw
16 running surface water as described in this Chapter. Unless otherwise provided by
17 law, all cooperative endeavor agreements to withdraw running surface water, and
18 any assignment of such agreement, shall be approved by the secretary as provided
19 in this Chapter. No provision contained in this Chapter should be construed as a
20 requirement for any person or entity to enter into any cooperative endeavor

1 agreement to withdraw running surface water. This Chapter shall have no effect on
2 the rights provided for in Civil Code Articles 657 and 658 or any rights held by
3 riparian owners in accordance with the laws of this state. It is also the intent of the
4 legislature that should any portion of this Chapter be found to be unconstitutional
5 that the remaining parts shall continue in force and effect.

6 B. No agency or subdivision of the state otherwise authorized to enter into
7 a cooperative endeavor agreement to withdraw running surface water, or assignment
8 of such shall do so unless the said agreement is in writing, provides for fair market
9 value to the state, is in the public interest, and is contained on a form developed and
10 prescribed by the State Mineral and Energy Board and approved by the attorney
11 general. No such cooperative endeavor agreement to withdraw running surface
12 water shall be valid unless and until such agreement is approved by the secretary
13 following the submission of an application for approval, which the secretary shall
14 develop and prescribe. The secretary shall conduct the evaluation provided for in
15 Subsection D of this Section and take action on the application within sixty days of
16 the application being deemed complete.

17 C. Unless otherwise provided by law, the secretary is authorized to enter into
18 any cooperative endeavor agreement to withdraw running surface water, provided
19 that any such agreement complies with the prohibition against gratuitous donation
20 of state property by ensuring that the state receives fair value for any water removed,
21 and the substance of the agreement is contained within a written cooperative
22 endeavor agreement as provided for in Article VII Section 14 of the Constitution of
23 Louisiana.

24 D. The secretary shall evaluate each application for a cooperative endeavor
25 agreement to withdraw running surface water and each such cooperative endeavor
26 that he may enter to ensure that each is in the public interest. The secretary shall
27 consider whether the proposed agreement is based on good management practices
28 and sound science, and is consistent with the required balancing of environmental
29 and ecological impacts with the economic and social benefits found in Article IX.

1 Section 1 of the Constitution of Louisiana. In his evaluation the secretary shall also
2 ensure that all cooperative endeavor agreements to withdraw running surface water,
3 or assignments of such, adequately consider the potential and real effects of such
4 contracted activity on the sustainability of the water body and on navigation. Any
5 assignment of any such cooperative endeavor agreement to withdraw running surface
6 water may be approved by the secretary in the same manner as an agreement as
7 provided in this Section, unless otherwise provided for by law.

8 E. No cooperative endeavor agreement to withdraw running surface water,
9 or an assignment of such, entered into pursuant to the provisions of this Chapter shall
10 have a term extending beyond December 31, 2020.

11 F. The secretary may act to protect the natural resources of the state by
12 reducing any withdrawal of water from the running surface waters of the state
13 otherwise agreed to be withdrawn pursuant to an agreement entered into pursuant to
14 this Chapter, or make other conditions, including the suspension or termination of
15 such withdrawal of water when such an action is required to protect the resource and
16 to maintain sustainability and environmental and ecological balance. If the secretary
17 acts to reduce or suspend the volume of water agreed to be withdrawn, he shall do
18 so in such a manner that the total necessary reductions are proportionally borne by
19 all users of the running surface waters, subject to this Chapter, in the area for which
20 a reduction is required. Prior to approval, the secretary shall ensure that each
21 contract or agreement or assignment thereof that involved the withdrawal of the
22 running surface waters of the state provides for the secretary's authority, without
23 liability for damages, in this regard.

24 G.(1) The secretary, in deciding whether to approve or require changes in an
25 application for a cooperative endeavor agreement to withdraw running surface water,
26 or assignment of such, shall consider the various existing and potential users of the
27 resource and shall give appropriate consideration and priority to the following users
28 or uses in the following order of priority:

1 (a) Human consumption by means of a public water system or a private
2 water system that provides domestic potable water service.

3 (b) Agricultural uses that provide sustenance to animals or irrigation to
4 plants.

5 (c) Any commercial purpose or other industrial activity.

6 (2) The secretary shall also consider the impact of any proposed contract,
7 agreement, assignment, or use on resource planning. By way of illustration but not
8 limitation, these would include any potential project or use that impacts:

9 (a) Stream or water flow energy.

10 (b) Sediment load and distribution.

11 (c) Navigation.

12 (d) Aquatic life.

13 (e) Other vegetation or wildlife.

14 (3) The management of cooperative endeavor agreements to withdraw
15 running surface water shall be consistent with the comprehensive master plan for
16 coastal restoration and protection as approved by the Coastal Protection and
17 Restoration Authority and the legislature.

18 H. Approval of an application for a cooperative endeavor agreement to
19 withdraw running surface water or assignment of such pursuant to this Chapter does
20 not obviate the need for other permits or authorizations required by law for any
21 proposed activity.

22 §962. Definitions

23 As used in this Chapter, the following words, terms, and phrases have the
24 meaning ascribed to them in this Section, unless the context clearly indicates a
25 different meaning:

26 (1) "Running surface waters" mean the running waters of the state, including
27 the waters of navigable water bodies and state owned lakes.

28 (2) "Secretary" means the secretary of the Department of Natural Resources,
29 and his designees.

1 §963. Management by the Department of Natural Resources

2 A. Except as otherwise provided by law, the Department of Natural
3 Resources shall be the state agency charged with managing and monitoring the
4 implementation of all cooperative endeavor agreements to withdraw running surface
5 water or assignments thereof. The secretary shall have the authority to designate
6 where within his agency the various functions of this Chapter are to be performed,
7 to delegate any required duty to one or more persons, to issue contracts or enter into
8 agreements with other public entities when required in his opinion for the efficient
9 administration of this Chapter, and to establish any necessary policy or promulgate,
10 in accordance with the provisions of the Administrative Procedure Act, any
11 regulations that in his opinion are necessary for the efficient implementation of this
12 Chapter.

13 B. The secretary may negotiate and enter into a cooperative endeavor
14 agreement to withdraw running surface water under terms which the secretary deems
15 to be most advantageous to the state.

16 C. Where there exists a governmental entity to manage, preserve, conserve,
17 and protect running surface water that lacks the authority to enter into cooperative
18 endeavor agreements to withdraw running surface water, such entities may provide,
19 by resolution, their recommendations to the secretary of any requested terms of such
20 contracts or agreements entered into by the secretary.

21 Section 2. It is the express intention of the Legislature of Louisiana that nothing
22 contained herein be interpreted as codifying, confirming, or ratifying; or overruling,
23 nullifying, or rejecting the statements of law contained in the Memorandum to All State
24 Surface Water Managers from the State Of Louisiana, Office of the Attorney General, and
25 the secretary of the Department of Natural Resources dated February 5, 2010, and also in
26 Attorney General opinions, 08-0176, 09-0028, 09-0066 and 09-0291. But rather, the intent
27 of the legislature with this enactment is to provide needed interim stewardship of running
28 surface water, as detailed in HCR No.1 of the 2010 Regular Session of the Legislature. That
29 resolution requests from the Ground Water Resources Commission, a report to the

1 legislature by March 1, 2011, with recommendations for changes necessary for optimal,
2 comprehensive, integrated surface and ground water management policy, so that a thorough,
3 deliberate, public, legislative evaluation of the issues and concerns may be had before a
4 permanent state policy is established. The legislature finds that, pending this legislative
5 process, it is necessary to immediately provide for an appropriate level of management and
6 availability of the state's surface water resources in the interim period, and to provide for an
7 optimal level of protection and use of all the natural resources of the state. In this regard,
8 the express intention of the legislature is that the provisions of Chapter 9-C of Title 30 of the
9 Louisiana Revised Statutes of 1950, comprised of R.S. 30:961 through 963, shall be null,
10 void, and without effect after December 31, 2012.

11 Section 3. This Act shall become effective upon signature by the governor or, if not
12 signed by the governor, upon expiration of the time for bills to become law without signature
13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
15 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Morris

HB No. 1486

Abstract: Authorizes cooperative endeavor agreements for the withdrawal of running surface water.

Proposed law authorizes a person or entity to enter into a cooperative endeavor agreement to withdraw running surface water with an agency or subdivision of the state authorized in present law to enter such agreements or with the secretary of the Dept. of Natural Resources.

Proposed law provides that proposed law shall not effect the rights of riparian owners in present law.

Proposed law requires that a cooperative endeavor agreement to withdraw running surface water with an agency or subdivision of the state shall be in writing, for fair market value, in the public interest, on a form prescribed by the State Mineral and Energy Board, and approved by the attorney general and the secretary of the Dept. of Natural Resources.

Proposed law authorizes the secretary of the Dept. of Natural Resources to enter into cooperative endeavor agreement to withdraw running surface water and requires such agreements to be in writing and for fair market value.

Proposed law requires the secretary to evaluate such agreements that each is in the public interest and consider whether the agreement is based on good management practices and sound science and consistent with present law requirement of balancing environmental and ecological impacts with economic and social benefits. He must also consider the effects on sustainability of the water body and on navigation. Applications for such cooperative endeavor agreement shall be evaluated and action taken within 60 days of the application being deemed complete.

Proposed law requires any assignment of agreements entered into pursuant to proposed law must be approved by the secretary.

Proposed law authorizes the secretary to reduce or terminate withdrawals otherwise agreed to in order to protect the resource and maintain sustainability.

Proposed law requires the secretary to consider existing users in approving or making changes to an application and prioritizes the such users as human consumption, agricultural uses, and finally, commercial and industrial uses.

Proposed law provides such agreements shall be consistent with integrated coastal protection, and approval of agreements does not remove the necessity to obtain permits required by present law.

Proposed law places the management and monitoring the implementation of these agreement within the Dept. of Natural Resources.

Proposed law provides proposed law is not codifying, confirming, or ratifying; or overruling, nullifying, or rejecting the statements of law contained in the Memorandum to All State Surface Water Managers from the State Of Louisiana, Office of the Attorney General, and secretary of the Department of Natural Resources dated Feb. 5, 2010, and also in Attorney General opinions, 08-0176, 09-0028, 09-0066 and 09-0291.

Proposed law sunsets after Dec. 31, 2012.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 30:961-963)